

### **REMARKS**

Claims 1-4, 6, 8-16, 19, 21, 24, and 26-30 are pending in the application, claims 5, 7, 17, 18, 18 (second occurrence), 20, 22, 23, and 25 being canceled and claims 26-30 being newly added herein. Claims 1, 24, 27, 28 and 30 are the only independent claims.

#### ***Claims Objections***

Claims 18-25 stand objected to because there are two claims numbered 18.

Both claims 18 have been canceled herein. The subject matter of the second claim 18 appears in new claim 26.

#### ***Claims Rejections - 35 U.S.C. § 112***

Claim 11 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner points out that there is no antecedent basis for the term “said backbone” in line 5 of claim 11.

In response to the rejection of claim 11 under 35 U.S.C. § 112, second paragraph, the claim has been amended to delete the phrase “and allowing for said backbone to slide over said staple.”

#### ***Claims Rejections - 35 U.S.C. §§ 102 and 103***

Claims 17, 18, 21, and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,306,286 to Conners.

Claim 25 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,667,823 to Wolf, Jr.

Claims 1-6, 9, 14, 22, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,590,937 to Deniega.

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Conners.

The Examiner has indicated that claim 24 is allowed and that claims 7, 8, 10-13, 15, and 16 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

The independent claims will now be discussed.

**Claim 1** In response to the rejection of claim 1 and the indicated allowability of claim 7, claim 1 has been amended to incorporate the subject matter of claim 7, which has been canceled. Inasmuch as claim 1 is equivalent to claim 7 rewritten in independent form to include all of the limitations of the base claim (claim 1) and any intervening claims (none), claim 1 is allowable.

**Claim 24** The Examiner has indicated that claim 24 is allowed.

Applicant has amended claim 24 to change the term “push bar” to the term “pusher member,” inasmuch as “push bar” may be taken to designate a rigid member, whereas applicant’s claimed invention clearly pertains to flexible endoscopy, as well as rigid endoscopy. Applicant has further amended claim 24 to delete two limitations in the description of the staple holding jaws. It is believed that claim 24 remains patentable over the prior art.

**Claim 27** Claim 27 has been drafted to set forth in part a feature of applicant’s invention that is of particular importance in a flexible endoscopy application of the invention. Pursuant to claim 27, the backbone member of applicant’s stapling assembly is provided at a proximal end with a cutout or recess receiving a pusher member. Neither Conners nor Deniega discloses or suggests such a feature. The back sides of the

staple closure or backbone members of those references are smooth, without a recess or cutout that could receive or seat a pusher member.

**Claim 28** Claim 28 has been drafted to incorporate essential features from claim 1 and claim 10. Pursuant to the indication made by the Examiner, claim 28 is believed to distinguish over the prior art.

**Claim 30** Claim 30 has been drafted to set forth selected features of applicant's staple and backbone locking element. Pursuant to claim 30, the staple is provided on an outer side, along each of two oppositely facing surfaces, with a smooth groove segment and a notch at a distal end of the respective groove segment, while the backbone element, includes a pair of substantially rigid legs each having a protrusion extending towards the other leg and engageable in the notch on a respective one of said opposite facing surfaces, the backbone element being provided on a proximal side with a recess or seat for coupling to a pusher member.

Claim 30 is believed to distinguish over the prior art because neither Connors nor Deniega discloses or suggests (1) protrusions on the legs of the backbone element engageable in notches on the staple or (2) a recess or seat on a proximal side of the backbone element for coupling to a pusher member.

The claim amendments, if any, made herein are made without prejudice to applicant's right to pursue additional subject matter in a separate continuation or divisional application.

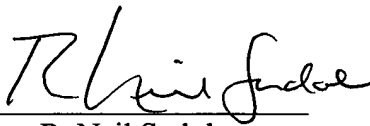
### ***Conclusion***

For the foregoing reasons, independent claim 1, as well as the claims dependent therefrom, is deemed to be in condition for allowance. An early Notice to that effect is earnestly solicited.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,

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